Background and Historical Context

The evolution of governmental oversight for juvenile justice in the nation's capital city originated in conversations about the relative authority of federal and local entities early in the twentieth century. Established in 1906, the juvenile code was amended four times between 1938 and 1969. The changes in 1969, along with the organization and creation of the Superior Court of the District of Columbia in 1970, largely created the oversight and management structure that exists today. These developments included attention to more substantial community-based services for persons in need of supervision, the assigning of various responsibilities for intake and diversion to the Director of Social Services at the Superior Court, and calls for more systematic coordination with local District of Columbia government agencies.

In addition to creating a structure which stands today as a "bifurcated system," where federal and local authorities share different responsibilities in detention and commitment of juvenile delinquents, the 1969 and 1970 changes also raised critical questions about the scope and quality of services. Ultimately, the public debate in 1969 and 1970 resulted in a more tightly defined and condensed juvenile code, better legal representation for youth through the establishment of the Public Defender Service, and the establishment of the Office of Corporation Counsel's right to represent the District in juvenile proceedings before the Superior Court. Debates over the next fifteen years would make it clear that the lack of a more unified system created problems for the

delivery of services to children and youth. The 1969 law also established categories of delinquency, persons in need of supervision, and neglect.

Policy conversations related to the juvenile code from 1969 onward provide a valuable historical note for the evaluation of current challenges, as both the Court and the District of Columbia local government grappled with the practicalities of bifurcation in the context of expanding functions and contests of meaning over jurisdictional oversight. In no other context did this become more hotly debated than in the discussion of federal prosecutorial discretion related to juvenile treatment as adults. Patricia Wald of Neighborhood Legal Services (predecessor to Public Defender Service) informed one Senate hearing related to lowering the age for adult prosecution in 1969 that she did not believe that federal prosecutors supplied the "evidence that our adult criminal system in the District has a better rehabilitation record than our juvenile system, or that prosecutors can pick those that need adult treatment better than judges or social service (sic) persons."[4] Wald's comments have been addressed by contemporary social science research which demonstrates that juveniles incarcerated with adults ultimately have a higher recidivism rate and commit more violent acts upon release from adult facilities.

Wald's comments were also made alongside others related to the Court disposition process and gaps in services for youth. "Court reform is essential," the Committee on the District of Columbia heard in 1969, "but even more important is reform in the pretrial detention facilities and improvement in the post-trial correctional

[4]*Crime in the National Capital,* Senate Committee on the Judiciary, Juvenile Court Proceedings, November 18, 1969, p.1858.

institutions." As conditions that compromised life and safety, as well as poor programming, were exposed at Oak Hill and the Receiving Home, the desire for accountability increased. This would become much clearer after a class action lawsuit was filed in 1985 and a panel of experts issued their recommendations.

The *Jerry M.* case stands as a symbol of the challenges surrounding the building of a continuum of care in the District of Columbia. With the historical context of overcrowding and mixing of pretrial and committed populations, escalating lengths of stay, poor alternatives for community placement of status offenders, improper police procedures related to detention, and the poor quality of facilities and programming at the city's Receiving Home and at the Oak Hill Youth Center in Laurel, Maryland, this action should not have surprised city or community leaders (Soler 1986).

Jerry M., et. al. v. District of Columbia, et. al, C.A. No. 1519-85, Superior Court of the District of Columbia, attempts to place some specific obligations on the District of Columbia with respect to number of children in secure detention or secure commitment pursuant to being respondents in the juvenile justice system. It also attempts to impose some specific requirements on the District of Columbia as to the services and treatment afforded to those respondents by the District of Columbia for their care and rehabilitation. In addition, the case attempts to hold the District of Columbia accountable for not complying with these obligations. This is a civil action, so that the obligations are to be forged in the context of litigation with the plaintiffs on one side and the defendants on the other side. The litigation resulted in the entry of a Decree or Judgment by the Court,

which is binding on all parties, primarily and principally the District of Columbia. The parties agreed that children in the system have the right to be housed and provided with services in the least restrictive setting, consistent with safety of the community, the needs of the child and applicable law and court rules.

The Mayor's Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform recognizes that these objectives are all mutually dependent and all must be planned and designed at the same time, so that they all fit together to form one consistent continuum for the care and treatment of children in the custody of or commitment to the District of Columbia. Whereas these objectives are necessary to come in compliance with *Jerry M.*, they are also fundamental to youth safety and juvenile justice reform.

Working with and under the direction of the Mayor of the District of Columbia, the Commission expects that the proposed Youth Services Coordinating Commission will make bolder progress because of the ability to establish accountability in a more collaborative framework. The closing of Cedar Knoll in 1993 and a subsequent order from Judge George W. Mitchell to close the Receiving Home in 1995 resulted in an end to some of the deplorable conditions for some of the city's children in the juvenile justice system, but these actions did not solidify a closer working relationship among the judiciary, Executive branch, DC Public Schools, and other relevant agencies that impact detention and commitment of children.[5]

[5]Bart Lubow and Joseph B. Tulman, "Introduction: The Unnecessary Detention of Children in the District of Columbia." *District of Columbia Law Review* 3 (Fall 1995).

In addition, the Commission accepts that *Jerry M.* is intimately related to the leadership and partnership of the Council of the District of Columbia, which is bound by the judgment and has as much responsibility as anyone else to take immediate action to bring the District of Columbia in compliance with the judgment entered pursuant to the consent of all the parties.

As we all contemplate the recommendations and information set forth in this report, one need only read the original *Jerry M.* panel report dated November 26, 1986 to see that - in addition to the revelations related to deplorable conditions of detention and commitment in 1985- panelists also raised other themes.[6] Major themes included police/youth relations, stereotyping of youth in the media and among some youth service providers, inadequate diversion opportunities, and a general sense of frustration with a fragmented juvenile justice system. Currently, the District of Columbia and the *Jerry M.* plaintiffs are also working out details for a community-based continuum of care, pending an expert report authorized under Memorandum Order B of the consent decree.[7] The Commission is also aware of the need to develop a plan to bring youth home who are currently in residential placement out-of-District in facilities where there is poor monitoring and oversight of care.[8] Still, much work remains to be done to build an effective system of care for youth in the juvenile justice system.

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[6]Marty Breyer, Robert E. Brown, and Paul DeMuro, *Report of the Jerry M. Panel*, November 26, 1986.
[7]Libby K. Nealis to Judge Eugene N. Hamilton, September 28, 2001; Vincent Schiraldi to Judge Eugene N. Hamilton, October 3, 2001; Justice for DC Youth! Coalition to Judge Eugene N. Hamilton, August 16, 2001; *Jerry M., et.al., Plaintiffs, v. District of Columbia, et.al., Defendants* C.A.No.1519-85 (IFP), *Forty-fifth Report of the Monitor*, April 1, 2001-June 30, 2001, p.14; *Stipulation Regarding Order B* (See Appendix F).
[8]Annys Shin, "Lost in Transit: The District wants to bring kids home from distant treatment centers. But to what?" *Washington City Paper*, October 12, 2001, pp.21-34; Josephine Murphy, "Protecting Children: The Courts Can Do Better," *The Washington Post,* October 30, 2001, p.A20.